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# In the Supreme Court of the United States

OCTOBER TERM, 1948

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No. 701

GERALD F. COBLEIGH and SLAWSBY REAL ESTATE  
Co., Inc., *Petitioners*

v.

TIGHE E. WOODS, Housing Expediter,  
OFFICE OF THE HOUSING EXPEDITER

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On Petition for a Writ of Certiorari to the United States Court  
of Appeals for the First Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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## OPINIONS BELOW

The opinions of the District Court (R. 11, 51) are reported at 75 F. Supp. 125, 594. The opinion of the Court of Appeals (R. 62) is reported at 172 F. 2d 167.

**JURISDICTION**

The judgment of the Court of Appeals was entered on January 26, 1949 (R. 67). The petition for a writ of certiorari was filed on April 6, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**QUESTION PRESENTED**

Whether the court below properly interpreted Section 18 of the Price Control Extension Act of July 25, 1946, as having by its own force revived the provisions of the Rent Regulation for Housing which had been in effect on June 30, 1946 when the Emergency Price Control Act expired, thus making reissuance of that regulation by the Price Administrator unnecessary.

**STATUTES AND REGULATIONS INVOLVED**

The pertinent provisions of the Price Control Extension Act of 1946, 60 Stat. 664, 678 (note to 50 U.S.C. App. 901a) and the Rent Regulation for Housing (8 F. R. 7323) are set forth in the Appendix, *infra*, pp. 13-15.

**STATEMENT**

The petitioners are the owners and operators of an apartment building in Nashua, New Hampshire, within the Manchester Defense-Rental Area (R. 12, 52) and as such were, at the times here involved, subject to the Rent Regulation for Housing (8 F.R. 7323) which was issued pursuant

to the Emergency Price Control Act of 1942, as amended and extended (56 Stat. 23; 58 Stat. 632; 59 Stat. 306; 50 U.S.C. App., 901 *et seq.*). Section 4 and Schedule A of the Regulation, *infra*, p. 15 established as the maximum rents on these apartments, the rents charged therefor on March 1, 1942, and these maximum rents continued in effect without change up to and including June 30, 1946. The Congress having failed to enact legislation for its further extension, the Emergency Price Control Act of 1942, as amended, expired by its own terms at midnight, June 30, 1946.

The Price Control Extension Act of 1946 was enacted on July 25, 1946 (60 Stat. 664). By Section 1 of that Act, the Emergency Price Control Act of 1942, as amended, was extended for a year by striking out the date "June 30, 1946" in Section 1(b) of the latter Act, and substituting "June 30, 1947." Section 18 of the Price Control Extension Act, *infra*, pp. 13-14, contained the following provision pertinent to the case at bar:

(1) The provisions of this Act shall take effect as of June 30, 1946, and (2) all regulations, orders, price schedules, and requirements under the Emergency Price Control act of 1942, as amended \* \* \*, and the Stabilization Act of 1942, as amended, which were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent as if this Act had been enacted on June 30, 1946, \* \* \* *Provided further*, That no act or trans-

action, or omission or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such Acts \* \* \*.

Between July 1, 1946 and July 25, 1946, the period during which price control was not currently in force and effect, petitioners served upon their tenants notices, which were valid under the laws of New Hampshire, to the effect that the rentals on their housing accommodations would be increased at the next rent date (R. 9). During this period, petitioners demanded and received from each of the tenants of the housing accommodations, \$2.00 per week in excess of the maximum rent that had been in effect until rent control lapsed on June 30, 1946, and petitioners continued to demand and receive this additional rent until restrained from doing so by order of the District Court for the District of New Hampshire on March 12, 1947 (R. 9, 49).

On October 7, 1946, the Price Administrator (predecessor to respondent) filed a complaint in the District Court against petitioners under Section 205 of the Emergency Price Control Act, as extended, claiming that petitioners had overcharged their tenants an aggregate of \$316 for the

period July 26 to September 7, 1946 (R. 6). The complaint also prayed for equitable relief under Section 205(a) by way of injunction against continued violations, and for an order of restitution to tenants for the amounts of their respective overcharges. In addition, the complaint asked for judgment in favor of the United States in the amount of \$948, or three times the amount of the overcharges, but provided that if restitution to the tenants should be granted by the Court, the prayer for judgment in favor of the United States might be considered as asking for twice the amount of the overcharges (R. 7). After trial of the issues, the District Court entered judgment in favor of the respondent which directed petitioners to make restitution to the tenants, and awarded single statutory damages in favor of the United States (R. 17). On appeal, the judgment of the District Court was affirmed by the Court of Appeals (R. 62). Similar disposition was made by the Court of Appeals of an appeal from another judgment of the District Court for statutory damages and restitution (R. 55), in which the complaint filed (R. 45) was in all essentials like the one discussed above, except that it alleged overcharges for the period September 7, 1946, to March 12, 1947, which was not covered by the earlier complaint (R. 65). Petitioners seek review here of both judgments, and raise the same objections regarding each.

## ARGUMENT

The Emergency Price Control Act of 1942, as amended, 56 Stat. 23, 58 Stat. 632, 59 Stat. 306, 50 U.S.C. App. 901, *et seq.*, expired by its own terms on June 30, 1946, the Congress having failed to extend the Act by that date. On July 25, 1946, the Congress enacted the Price Control Extension Act, reviving and extending the then expired Emergency Price Control Act until June 30, 1947. Section 18 of the Price Control Extension Act, *infra*, pp. 13-14, provided that the extension of the Price Control Act was effective as of June 30, 1946, and that all regulations and orders issued under the Emergency Price Control Act, which were in effect on June 30, 1946, were in effect in the same manner and effect as if the Extension Act had been enacted on June 30, 1946, except that acts and omissions occurring between June 30, 1946, and the date of enactment should not be deemed to be violations of the Emergency Price Control Act, as amended, or of any regulations or orders issued thereunder. Thus, the Price Control Extension Act caused the Emergency Price Control Act, and the regulations issued thereunder which were effective on June 30, 1946, to be retroactively in full force and effect, with the exception noted during the interim period, and also placed the said Act and Regulations in full force and effect prospectively as of July 25, 1946.

Petitioners contended that Section 18 should be interpreted as not making the Rent Regulation



effective as to them unless and until the Price Administrator should reissue it. Both the District Court and the court below rejected petitioners' interpretation of the section. The Court below pointed out (R. 63), "Congress thus made clear in the proviso above quoted that it did not intend the Extension Act to be retroactive in the sense of rendering illegal the receipt of rents which had been lawfully collected during the interregnum period" (R. 63). If, however, the landlord raised his rents during the brief period of no control, such rents on and after July 25, 1946, were rolled back to the maximum rentals in existence on June 30, 1946, pursuant to the Regulation in effect at that time. Petitioners' liability in this case arose solely because they failed to adhere to these lawful maximum rentals on and after July 25, 1946, but, on the contrary, demanded and received from each tenant, for the use and occupancy of his respective apartment, \$2.00 per week over and above the lawful maximum rent which had been in effect up to the lapse of rent control on June 30, 1946. The constitutionality of this extension of the Emergency Price Control Act was upheld by this Court in *Fleming v. Rhodes*, 331 U.S. 100. See also *Porter v. Shibe*, 158 F. 2d 68 (C.A. 10); *Porter v. Merhar*, 160 F. 2d 397 (C.A. 6); *Woods v. Schmid*, 164 F. 2d 981 (C.A. 5).

1. Petitioners contend that the court below misconstrued the proviso clause of Section 18 in fail-

ing to give due consideration to "Congressional intention and administrative understanding" that changes in the terms of a tenancy taking place between June 30, 1946, and July 25, 1946, should remain in force until changed by administrative order. In other words, they assert that before the Rent Regulation could become effective after the Price Control Act was passed, there was a duty imposed upon the Administrator by the Congress to issue a specific order nullifying the acts which occurred during the decontrol period, and to re-issue the Rent Regulation which was in effect on June 30, 1946. As the District Court said in its opinion (R. 14):

A sufficient answer to the defendants' proposal is that insofar as it concerns the situation in the instant case no order was needed. The reenactment revitalized the pertinent regulation which was in effect on June 30, 1946, and an additional order would add nothing to its force and extent.

Petitioners observe that the Price Administrator did issue certain amendments to provisions of the regulations which were in effect on June 30, 1946, and they contend that it was necessary to re-issue each of the other provisions of the regulation. We submit that the contention is plainly without substance. The reviving Act brought the Rent Regulation as it existed on June 30, 1946, into full force and effect prospectively as of July 25, 1946,

and reissuance by the Price Administrator would have been superfluous and wholly unnecessary.

2. Petitioners further contend that the interpretation placed on the Price Control Extension Act renders that Act unconstitutional in that it permits discrimination between persons similarly situated and having the same property rights, without an adequate basis for the discrimination. Petitioners assert that those outside defense-rental areas are permitted to receive an adequate return on their property, while those within defense-rental areas may not be permitted to receive an adequate return, and that the Act as interpreted fails to provide a method for correcting this discrimination (Pet. 11-12). Similar contentions were overruled by this Court in *Bowles v. Willingham*, 321 U. S. 503. See, also, *Woods v. Cloyd W. Miller Company*, 333 U. S. 138; *Taylor v. Brown*, 137 F. 2d 654 (E.C.A.), certiorari denied, 320 U. S. 787. Consequently, the constitutional issue which petitioners advance with respect to discrimination has already been resolved against their contentions. This likewise forecloses petitioners' contention that the court below failed to follow the rule of construction that where a statute is susceptible of two interpretations, one which leaves its validity clear, and the other which raises doubts thereof, the interpretation must be adopted which favors validity. In addition, there is no substance in petitioners' statement that the "Act fails to provide a

method for correcting this discrimination.” As the court below pointed out, petitioners might have been entitled to administrative relief under one of the adjustment provisions of the Regulation, or they could have filed a protest against the Regulation as applied to themselves under Section 203(a) of the Emergency Price Control Act (R. 67). If their protest was denied, petitioners could have applied to the Emergency Court of Appeals for purposes of passing upon the validity of the Regulation (Sec. 204(d) of the Act, 50 U.S.C. 924(d)); *Yakus v. United States*, 321 U.S. 414, 429; *Bowles v. Willingham*, *supra*; *Woods v. Hills*, 334 U.S. 210.

3. Petitioners’ also contend that the Act as interpreted by the court below constitutes an improper assumption by Congress of judicial power. Petitioners’ argument that Congress, in enacting Section 18, usurped a function which it ordinarily commits to the charge of an administrative agency, is so patently lacking in merit as to require no answer. Obviously, in reviving the Rent Regulation which was in effect on June 30, 1946, Congress did not in any way exercise judicial functions, but purely legislative functions.

Petitioners’ attempt to distinguish the decision of this Court in *Fleming v. Rhodes*, 331 U. S. 100, is not persuasive. In that case, Rhodes unsuccessfully contended that the effect of the Price Control

Extension Act of 1946 was to divest him illegally, and others similarly situated, of vested rights under judgments of eviction obtained during the de-control period. Here, petitioners assert that the same Act illegally deprives them of the right after July 25, 1946, to collect rentals contracted for by them and their tenants during the interim period, which rentals were higher than the Rent Regulation permitted. Thus, the only distinction between the *Rhodes* case and the case at bar is that petitioners' alleged rights are of less significance than those present in the *Rhodes* case.

Finally, petitioners attempt to distinguish *Bowles v. Willingham*, *supra*, on the ground that in that case the Emergency Price Control Act was sustained as a valid exercise of the war powers of Congress, while here petitioners state that on July 25, 1946, hostilities had come to an end. This contention is answered by this Court's holding that "the cessation of hostilities does not necessarily end the war power" (*Fleming v. Mohawk Wrecking & Lumber Company*, 331 U. S. 111, 116; *Woods v. Cloyd W. Miller Company*, *supra*).

## CONCLUSION

The decision of the court below is clearly correct. There is no conflict of decision and further review is not warranted. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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May, 1949.

## APPENDIX

1. Section 18 of the Price Control Extension Act of 1946, 60 Stat. 664, 678 (note to 50 U.S.C. App. 901a), reads as follows:

Section 18. (1) The provisions of this Act shall take effect as of June 30, 1946, and (2) all regulations, orders, price schedules, and requirements under the Emergency Price Control Act of 1942, as amended (except regulations or requirements under section 2(e) thereof relating to meat, flour, or coffee), and the Stabilization Act of 1942, as amended, which were in effect on June 30, 1946, shall be in effect in the same manner and to the same extent as if this Act had been enacted on June 30, 1946, and (3) any proceeding, petition, application, or protest which was pending under the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, on June 30, 1946, shall be proceeded with and shall be effective in the same manner and to the same extent as if this Act had been enacted on June 30, 1946: *Provided*, That in any case in which the Emergency Price Control Act of 1942, as amended (except sections 204 and 205), or the Stabilization Act of 1942, as amended (except sections 8 and 9), or any regulation, order, or requirement under either of such Acts, prescribes any period of time within which any act is required or permitted to be done, and such period had commenced but had not expired on June 30, 1946, such period is hereby extended for a number of days equal to the number of days from July 1, 1946,

to the date of enactment of this Act, both inclusive: *Provided further*, That no act or transaction, or omission or failure to act, occurring subsequent to June 30, 1946, and prior to the date of enactment of this Act shall be deemed to be a violation of the Emergency Price Control Act of 1942, as amended, or the Stabilization Act of 1942, as amended, or of any regulation, order, price schedule, or requirement under either of such Acts: *Provided further*, That insofar as the provisions of this Act require the Administrator to make any change in any maximum price, such provisions shall not be deemed to require such change to be made before the thirtieth day following the date of enactment of this Act.

2. The pertinent provisions of the Rent Regulation for Housing (8 F.R. 7323) read as follows:

Section 1. *Scope of this regulation.* (a) *Housing and defense-rental areas to which this regulation applies.*—This regulation applies to all housing accommodations within each of the defense-rental areas and each of the portions of a defense-rental area (each of which is referred to hereinafter in this regulation as the “defense-rental area”), which are listed in Schedule A of this regulation, except as provided in paragraph (b) of this section.

In Schedule A, “the maximum rent date” and “the effective date of regulation” is given for each defense-rental area listed. \* \* \* Wherever the words “the maximum rent date” or



the words "the effective date of regulation" are referred to in this regulation, the dates given in Schedule A for the particular defense-rental area or portion of the defense-rental area in which the housing accommodations are located shall apply. \* \* \*.

Section 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:

(a) *Rented on maximum rent date.*—For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date.

#### SCHEDULE A—DEFENSE-RENTAL AREAS

Name of defense-rental area	State	County or counties in defense-rental area under Rent Regulation for Housing	Maximum rent date	Effective date of regulation	Date by which registration statement to be filed (inclusive)
(186) Manchester	N. H.	Hillsborough	3/1/42	11/1/42	12/16/42